

Regards DSL service. See 86 Ill. Adm. Code Part 495. (This is a GIL.)

January 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 23, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC creates tax compliance software for the telecommunications industry. We are updating our database & ask your help in determining the status of the above. Although you may have addressed this issue in the past, technology has continued to evolve, perhaps affecting taxability. Per our understanding, the service now operates this way:

A DSL modem supplied by the internet service provider is installed between the customer's PC & telephone jack, adding a high frequency, high-speed digital signal 'above' the voice traffic. (Service does *not* include laying copper wire, presumably provided by an LEC.) The ISP leases the wireline from the LEC & feeds the user's combined transmission through a splitter, which separates the high frequency data stream (fed through a router to the 'net) from the vocal signal (passed on to the PSTN).

Query #1: Is this high-speed DSL Internet Access service subject to tax, either in whole or in part? If yes, who pays, the ISP or the end-user customer?

Query #2: Can a 'sales-for-resale' exemption apply? That is, when the ISP leases the line from an LEC, must it pay sales tax on the transaction, with the ISP viewed for tax purposes as the end-user? Or, alternatively, since the ISP can be seen as supplying a telecommunications service in its DSL offering, can it get a 'sales-for-resale' exemption on the lease of the line & charge its end-user customers sales tax on the service they offer, since they are, at least in part, in effect reselling a telecom service?

Fact Pattern: Typically, the charge for high-speed DSL internet access is \$39.95/month. Assuming that an ISP *can* obtain a sales-for-resale exemption, would it be applicable to the *entire* \$39.95, or only to the portion *not* attributable to internet access? **Dial-up** access usually costs \$19.95, so the two components are about 50-50 in terms of pricing.

Discussion: Can the entire transaction be seen as 'internet access,' albeit at high speed & despite the higher charge for the telecom component? This line of reasoning would not distinguish between the two types of connection, dial-up & high-speed, & effectively ignores the telecom component. Characterizing the whole transaction this way would exempt it from taxability in states that exempt internet access from tax, as most do.

Thank you very much for your assistance & prompt reply.

You inquired about the Telecommunications Excise Tax Law and the taxation of DSL service. Please see 86 Ill. Adm. Code Part 495 regarding the Telecommunications Excise Tax. DSL service is telecommunications as defined in the Act. Please see General Information Letter ST 01-0043 GIL for more information. Department letter rulings are accessible on the Department's Website.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk